



# Freedom of speech and academic freedom:

implementing the Prevent duty and upholding the principles of academic freedom and freedom of speech

# Outline

- What the CT&S 2015 Act says about academic freedom and freedom of speech.
- How is this reflected in the Prevent statutory guidance.
- Academic freedom – a legal definition.
- Restrictions on academic freedom and freedom of expression.
- Implementing the Prevent duty and upholding academic freedom and freedom of expression.

# Counter-Terrorism and Security Act 2015

- Many people in higher education will be familiar with section 26 of the Act which placed on 7 specified authorities including higher education the duty to *"have due regard to the need to prevent people being drawn into terrorism."*
- Fewer will be familiar with section 31 which requires that, in meeting the duty, institutions must have:
  - *"particular regard to the duty to ensure freedom of speech"*
  - *"particular regard to the importance of academic freedom"*
- Section 31 also requires that in issuing guidance the secretary of state should pay the same *"particular regard"* to freedom of speech and academic freedom.

# The Prevent duty guidance for HEIs

- This is reflected in the guidance which states that the relevant higher education body (RHEB), in implementing the Prevent duty:

*“clearly needs to balance its legal duties in terms of both ensuring freedom of speech and academic freedom.”*

# The Prevent duty guidance for HEIs

- Prevent duty guidance also acknowledges that:

*“this commitment to freedom of speech and the rationality underpinning the advancement of knowledge means that they (RHEBs) represent one of our most important areas for challenging extremist views and ideologies.”*

- **So there is no challenge to academic freedom or freedom of speech, is there?**

# Academic Freedom – the legal right

1988 Education Reform Act referenced the right of academics  
in the UK:

*“ to question and test received wisdom and to put forward new ideas  
and controversial or unpopular opinions without placing themselves in  
jeopardy of losing their jobs or the privileges they may have at their  
institution.”*

# Freedom of speech – the legal right

The Education Act (No.2) 1986 provides that:

*“persons concerned in the government of any establishment....shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.”*

# Freedom of expression: a fundamental right

- Article 10 of the European Convention on Human Rights.
- Incorporated into UK law by the Human Rights Act 1998.
- Protection extends to the expression of views that may shock, disturb or offend the deeply held beliefs of others.



# But not an absolute right...

- A qualified right – the rights of the individual must be balanced against the interests of society.
- Any limitations or restrictions must be *clearly set out in law* , *necessary in a democratic society for a legitimate aim, and proportionate*.
- Does not protect statements that discriminate or harass or incite violence or hatred against other persons and groups.

# Freedom of expression should not be curtailed...

- Simply because other people find it offensive or insulting.
- Even deeply held beliefs, opinions and ideas cannot be immune to criticism or satire.
- Democracy depends on people being able to express, debate and criticise opposing viewpoints.
- But a great deal depends on context.

# Permitted restrictions

Article 10 of the ECHR allows restrictions on freedom of expression for specific purposes including:

- In the interests of national security or public safety.
- For the prevention of disorder or crime (eg to prohibit incitement to violence).
- For the protection of the reputation or rights of others (as reflected in defamation law and the prohibition on harassment under the Equality Act 2010).

# Let's consider this in the context of Prevent

- The Prevent guidance states that RHEBs should not provide a platform to encourage terrorism or to invite support for a proscribed terrorist organisation – both criminal offences. This relies on one of the permitted restrictions on freedom of expression referred to above and is not contentious.
- The guidance requires that RHEBs consider carefully whether *“views being expressed or likely to be expressed constitute extreme views that risk drawing people into terrorism”*. This is the area that causes concern. Let's look at why.

# Views that are “extremist”?

- It is the difficulty in defining what is and what isn't extremist that has led people to be concerned that the Prevent duty constitutes a threat to academic freedom/freedom of expression.
- The government definition of extremism is considered by some to be somewhat vague.
- Concerns also arise because the Prevent duty refers to non-violent as well as violent extremism as set out in the 2011 Prevent strategy.

# Fuelling the debate

- In January 2016 the THE ran a series of articles under the headline “Stop, look, listen: the university’s role in counter-terrorism”.
- The piece posed the question: does the UK’s Prevent strategy go too far in its demands on institutions?
- The contributions present a range of views, including:
  - A legal scholar questions the need for the Prevent duty when there already exists a range of legal controls on speakers, laws on terrorism, public order and incitement to hatred.
  - A terrorism researcher suggests the need to report extremists creates a climate of self-censorship that undermines the ability of students to critically engage with contemporary and historical issues especially in the social sciences.

# Fuelling the debate

- A “secularist” academic worries that no matter what restrictions the government imposes British universities will continue to be fertile ground for political ideologies that challenge the long-held liberties shared by the majority of society – “we need to end these unholy alliances before it is too late”.
- A Canadian professor of law sees as problematic the UK’s increasing focus on extremism per se as opposed to violent extremism – the duty to risk-assess non-violent extremism “bites too deeply into the legitimate realm of free speech and academic freedom”.

[www.timeshighereducation.com/features/the-universitys-role-in-counter-terrorism-stop-look-and-listen](http://www.timeshighereducation.com/features/the-universitys-role-in-counter-terrorism-stop-look-and-listen)

# The debate goes on...

- The vice-chancellor of the University of Sheffield wrote a [piece in the THE](#) on 21 January 2016, "On campus as in society, freedom of speech is not enough".
- The article discusses the challenge of meeting two of the long list of duties of the modern vice-chancellor – "to be aware of the possibility of radicalisation and to protect freedom of speech".
- The article is both passionate and pragmatic – the implicit challenge of meeting the Prevent duty lies in defending free speech but also not allowing those to use the campus as a platform for views that *"are lawful but not beneficial to our community. This includes those whose public addresses may be vicious or manipulative but also pundits who dismiss students' sincere engagement with the great issues of their time to make easy political points"*.



# In defence of academic freedom

We have so far:

- Looked at the legal basis of the right to academic freedom and freedom of speech.
- Acknowledged that these rights are not absolute.
- Noted what the Prevent duty statutory guidance says about the need to balance these rights with the duty to take action to prevent people being drawn into terrorism.
- Observed that Prevent is also concerned with the expression of extremist, albeit legal, views.
- Conceded that there are real concerns about the risk the Prevent duty poses for academic freedom and freedom of speech.

Let's now look at how the higher education sector can implement the duty and uphold academic freedom.

# The “acid” test

- The right to exercise academic freedom and freedom of expression must be “within the law”.
- This is not always straightforward – which is why the UUK has on two occasions issued guidance on freedom of speech in HEIs – in 2011 and 2013. The latest guidance is at:

<http://www.universitiesuk.ac.uk/highereducation/Pages/Externalspeakersinhighereducationinstitutions.aspx#.Vxh3QiMrJGw>

The Prevent statutory guidance references this UUK guidance:

- Any threat to academic freedom and freedom of expression would be an unintended consequence of the Prevent statutory and one about which the sector must be vigilant.
- The practice of academic freedom is a “normal function” for HEIs – all Prevent requires is that in its exercise “an appropriate weight is placed on the need to prevent people being drawn into terrorism”.

# UCU Statement on Academic Freedom

- The Universities and Colleges Union responded to growing concerns about threats to academic freedom by issuing its own statement in December 2015.
- Some of these concerns relate to security and anti-terrorism legislation where UCU claims there is a growing climate of self-censorship.
- The statement refers to the right to *“contribute to social change through free expression on matters of public interest.....this may touch upon sensitive or controversial issues”*.
- As you would expect the statement reminds readers that freedom comes with the responsibility to respect the rights of others.

**So, will Prevent stop people expressing views that might be “extremist”?**

# Opinions that are legal

- Those of you who have taken module one in this series may remember the list of views that may be regarded as extremist but are not illegal. The following slide repeats the same list.
- *Prevent* itself prevents no one from expressing such views – the difference lies in context, in how views are expressed.
- Is there a risk that their expression may “create an atmosphere conducive to terrorism” or that they may be being used to “legitimise terrorism”?
- It is in these circumstances that RHEBs are expected to challenge the views being expressed, and where necessary, to intervene.
- It is one of the basic tenets of Prevent that this can be achieved without risking academic freedom or freedom of expression.

# “Extremist” but legal?

- Anti-immigration?
- Pro-life?
- Anti-vivisection?
- Vocal support for a Palestinian state?
- Opposition or support for Israeli settlements in Gaza?
- Opposition to gay marriage?
- Criticism of wars in the Middle East?
- Rise of terrorism a result of British/Western foreign policy?
- Support for a united Ireland?
- Opposition to Prevent?

# Research and teaching on sensitive topics

- Central to the concept of academic freedom is the freedom to teach and research, including on sensitive or extremist-related topics.
- This is central to the role of HEIs in the advancement of knowledge.
- The requirement to ensure that this capacity is protected and managed appropriately pre-dates the CT&S Act 2015 and is referred to in the higher education-specific Prevent duty guidance.
- This also references the UUK guidance on this:

<http://www.universitiesuk.ac.uk/highereducation/Pages/OversightOfSecuritySensitiveResearchMaterial.aspx#.Vxh3xyMrJGw>

This reference is included in the section of the guidance on IT policies in the context of filtering – this has caused concerns – it is important to note that the guidance requires institutions to *“consider the use of filtering in the context of their overall strategy to prevent people being drawn into terrorism”* - the duty does not make mandatory extensive or wholesale filtering.

# Under the media spotlight

- High level of media interest in Prevent in higher education.
- Individual universities portrayed as hotbeds of extremism and breeding grounds for terrorists.
- At the same time (and sometimes by the same newspapers) accusations that they are guilty of suppressing freedom of speech.
- Where known terrorists have a link with an institution automatic assumption that they were radicalised on-campus.
- High-profile cases where students have been wrongly referred as students at risk including where they have accessed certain materials for legitimate and academic reasons.
- Perception – higher education not taking its role in Prevent seriously.
- This requires a robust response from the sector.

# Implementing Prevent and upholding freedoms

- If the concerns of the academy are to be addressed, and the Prevent duty implemented appropriately, all policies and procedures must incorporate this as an objective.
- This will reinforce the notion that staff and students can challenge received wisdom and put forward new ideas that might be controversial or unpopular.
- This approach will also ensure that institutions' legal duty to protect academic freedom and freedom of speech is not undermined.
- Let's look at how this might be achieved.



# Risk assessment

- All RHEBs are required under the Prevent duty to undertake risk assessment.
- A risk assessment of where and how their students might be at risk of being drawn into terrorism.
- And a risk assessment to look at institutional policies.
- Given the perception that the duty presents a risk to academic freedom and freedom of speech risk assessments and action plans that follow should address this risk and include measures to mitigate it.
- It is good practice that the consultation with students on how the institution will implement Prevent should include discussion of managing any risk to academic freedom.
- It is also good practice to consult in the same way with staff representative bodies.

# Statements on academic freedom

- Have universities always articulated well the rights and responsibilities associated with academic freedom?
- Policies have tended to concentrate on freedom of speech – understandable since this has been a longstanding requirement.
- The introduction of the Prevent statutory duty provides the opportunity if not the necessity to re-visit regulatory frameworks, policies and statements on academic freedom and to make these transparent.
- Some institutions have taken this approach – routing the review through their deliberative structures including senates or their equivalent.

# Policies on freedom of speech

- These need to be effective and built on the premise that they exist to uphold principles of freedom of expression, provided the views and opinions expressed are “within the law”.
- The Prevent duty reinforces this need – if the freedom to express opinions that others find offensive or shocking or extreme is to be upheld.
- Policies should be explicit in stating that their intent is to ensure that institutions are places where open debate is highly valued, but that views that harass, intimidate or threaten violence against individuals or societies will not be tolerated.
- They should refer explicitly to their relationship with duty to “prevent people from being drawn into terrorism”.

# External speakers

- Policies should identify what falls within the definition of external speaker and events to which the policies relate
- Anyone who took module one in this series will recall that there is no precise definition but that generally it includes any speaker who is not a member of staff or a student of the institution – policies should also cover events off campus branded in the name of the institution and events on campus organised by external organisations and/or individuals.
- Policies will need to include a procedure to approve external inputs to the curriculum – this process might be located in the academic unit concerned, is likely to be light touch, any cases where there is an identified risk (which should be very few) should follow a clear escalation process.
- These issues are discussed in detail in the next section – effective policies to ensure that cancellation of events is exceptional.

# Effective training

- This module and others in the series seek to ensure that the Prevent duty is implemented *proportionately*.
- Institutions must have in place training plans to support their implementation of the duty.
- Training is intended to make staff aware of Prevent and how they might help challenge extremist ideas which risk people being drawn into terrorism.
- It would be good practice to include in such training examples of legitimate activities and behaviours including access to materials for the purposes of academic inquiry and debate.

## A case study (Trainer led discussion)